STATE OF CONNECTICUT

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Testimony of Michelle Cruz, Esq., State Victim Advocate
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Good afternoon Senator Coleman, Representative Fox and distinguished members of the Judiciary Committee. For the record, my name is Michelle Cruz and I am the Victim Advocate for the State of Connecticut. Thank you for the opportunity to provide testimony concerning:

Raised House Bill No. 6629, *An Act Concerning Domestic Violence*

The Office of the Victim Advocate (OVA) would like to thank the Speaker's Task Force on Domestic Violence for their dedication and commitment to improving our state's response to domestic violence and further, for their support to improve the delivery of services to both victim and offenders. This certainly is not and has not been an easy task; the mere size and content of the proposal before you today is indicative of their hard work and perseverance to promulgate changes. Although the OVA is recommending some changes to the proposal, we stand ready to work with the Task Force, and others, to improve our state's response to domestic violence.

Connecticut became known over two and a half decades ago for the tragic assault on Tracey Thurman, or rather, the lawsuit against the Torrington Police Department, which forever changed how the nation responds to domestic violence. Since that time, as a state and a nation, we have been making strides to improve the response to domestic violence. Domestic violence is complex, complicated and pervasive. Domestic violence knows no boundaries, affecting all of us equally regardless of race, class, ethnicity and/or sexual orientation. Domestic violence cannot be defined by one simple act viewed from a sterile vacuum. There are many aspects and levels of domestic violence. Unfortunately we, as a state, have had to painfully learn that when domestic violence offenders' behaviors go unchecked, escalation of their violent behaviors usually follows. In order to effectively combat domestic violence, we must immobilize the violent offenders and respond swiftly to the escalating behavior, essentially creating a wall of protection between the victim and the violence. Although this is something we have failed to do thus far, I am confident through the bills here today, with some respectfully suggested amendments, we can and will stop domestic violence.

Sections 1, 2 & 3 **(Support)**

Section 1 of Raised House Bill No. 6629 addresses a current gap in protecting domestic violence victims through expanding the restraining order availability to cover emotional abuse and intimidation. By adding the language: "a pattern of verbal intimidation, threatening or stalking" a domestic violence victim will be able to pursue protection and seek

safety through the restraining order process and bring our screening process for restraining orders to parallel what we know about domestic violence, which is that often the homicidal offender will not be physical prior to turning murderous. It will allow victims to take precautionary measures, instead of waiting for the offender to physically attack them. This language will increase the protection of domestic violence victims, since we know in many cases, that escalation is evident through these known physical abusive patterns. The OVA is in strong support of this inclusion as most domestic violence offenders will begin their pattern of abusive behavior with verbal threats and intimidation. Additionally, those offenders who are amenable to changing their behavior will more than likely to take that step upon the issuance of a restraining order, rather than waiting until there is criminal court intervention. Those that are not willing are more prone to escalate and require further attention and programming.

As stated about, since we know domestic violence is not limited to a specific age, race, gender, ethnicity or relationship, we must craft our laws to include all populations who may and have become victims of domestic violence. Sadly this population includes our teens and pre-teens and our state's protections must reflect safety measures for this population. The response to incidents of domestic violence cannot be managed according to definition of a relationship or age of the victim and offender. The focus must be immobilizing the abusive behavior of the domestic violent offender. The proposal removes the age barriers and the relationship confusions for victims seeking assistance, while at the same time, resolving those barriers for law enforcement officials responding to incidents of domestic violence. The OVA urges support of Section 1, 2 & 3 of the proposal.

Section 4 **(Proposed amendment)**

In 1986, the General Assembly established the family violence response and intervention units. As evidenced in testimony, the premise was for first time domestic violence offenders to have an opportunity to avail themselves of domestic violence programming, namely the FVEP, in exchange for a dismissal of the charges. Similar to that of the accelerated rehabilitation program (A/R) and the alcohol education program (AEP), the offender would apply for eligibility and, if granted, would be required to fulfill certain program requirements successfully. Akin to A/R and AEP, the FVEP would to be available ONE TIME and for FIRST TIME DOMESTIC VIOLENCE OFFENDERS ONLY AND WHO WERE NOT CHARGED WITH SERIOUS OFFENSES. Sadly, that is not what is happening in our courts today.

In fact, domestic violence offenders are routinely participating in diversionary programs numerous times over. The OVA, in processing complaints from crime victims, often reviews the criminal history of an offender. In cases of domestic violence offenders, in almost every case, the offenders have been arrested numerous times and participate in numerous "informal" diversionary programs before being required to utilize the FVEP. Technically, as the law stands today, many of those offenders who have had previous arrests and resolved those charges through some form of "informal" diversionary program are eligible for the FVEP, since there are no convictions. The problem lies within the procedures and practices of the Court Support Services Division (CSSD) of the Judicial Department.

First and foremost, all criminal cases involving family violence are referred to CSSD for an initial assessment, with the exception of the most serious cases of murder and alike. Due to the nature and complexities of domestic violence, as well as the number of domestic violence cases occupying the criminal dockets, CSSD simply does not have the training or legal experience to triage these cases, and further, make a determination whether prosecution should be sought. The triage of a domestic violence case at arraignment by a trained prosecutor is invaluable and can be the difference between life and death, for we know this is the most dangerous time for the victim. One simply has to look at the murder in West Haven to see what happens when the prosecutor is absent in his or her role of triaging the domestic violence arrest. This is the responsibility of the prosecutor, and to date, has for all intents and purposes, been delegated to Family Relations Officers. CSSD should be assessing cases AFTER a prosecutor has determined those cases are appropriate for referral to the family violence intervention unit, not the other way around. By placing the triage responsibility back on the shoulders of the state's attorney, CSSD staff will be freed up to concentrate their efforts on the cases that have been referred to their unit and properly supervise offenders that have already been accepted for referral.

Currently, after an arrest, the domestic violence offender is brought to Court on next available court date, arguably to bring the case before a prosecutor to screen for safety issues, orders of protections, conditions of release as well as to identify violations of orders of protections or probation and/or conditions of release and respond accordingly. However, in reality, the domestic violence offender appears in court, is directed to CSSD for assessment, and often times the file is not even reviewed by the trained prosecutor. Depending on the case, CSSD may recommend a form of "informal" diversion rather than the FVEP. Informal diversion may include requirements such as substance abuse evaluation and treatment; anger management; and/or individual counseling. The criminal case is continued for a period of time (typically three months) for compliance and review. If after successful completion of the requirements by CSSD, the offender's criminal case will be nolled or dismissed. Unlike the FVEP, there are no limits to "informal diversion." The OVA has seen this pattern in every court, every day, across the state. The problem with this practice is that a domestic violence offender walks away emboldened, realizing that domestic violence cases are not taken seriously; the domestic violence victim walks away with the same dangerous message, only the victim is stifled and muted. The courage and strength required for the domestic violence victim to break free from the abuse and contact the authorities is met with a slap on the wrist and a nolle or dismissal. I cannot begin to tell you the numerous times a domestic violence victim, referencing this maddening practice, has stated, "I would rather return to the abuse then continue to participate in the court process". A heart breaking statement at best. In addition to that, domestic violence offenders permitted to "informally divert" a case will later maintain eligibility for the FVEP, should a new arrest occur. This was not and is not what the General Assembly envisioned in 1986.

Section 4 of the proposal seemingly seeks to limit the eligibility requirements for the FVEP. However, as stated above, it is the practice of this "informal diversion" that is problematic. At present, a domestic violence offender may have had two or three prior criminal cases informally diverted and upon the third or forth arrest, may finally be required to apply for the FVEP. Domestic violence offenders who are amenable to changing their

behavior are more likely to benefit from the FVEP upon a first arrest for domestic violence, not after a third or forth arrest. Conversely, these offenders are demonstrating a pattern of behavior and have actually escalated beyond the benefits of the FVEP. The proposal should require strict adherence to the intended purpose and benefits of the FVEP and that is catching domestic violence offenders early on with a program that changes behaviors. How pervasive is the problem?

In a report entitled, "The State of Connecticut, Family Flow Chart" it was reported in 2006, there were 29,050 domestic violence arrests. Of those, 25,450 cases were nolled or dismissed. Unfortunately the statistics do not depict how many of the remaining arrests were prosecuted as the report breaks the statistics down to focus on "charges" not cases. What we know is, out of the gate 25,450 offenders are in some sort of diversionary program, or rather, avoiding prosecution. Further, this report indicates that prosecutors at times will "be inclined to nolle the family violence crimes" and "proceed with the non-domestic felony charge", a practice that will inevitably protect the domestic violence offender from the negative ramifications of a conviction involving domestic violence, such as loss of one's ability to purchase a firearm under the Federal laws. In the end, the lack of prosecutions of domestic violence cases is pervasive across the state and threatens the safety of all victims of domestic violence. This has been the pattern in Connecticut for decades. According to statistics prepared by Kevin Dunn at a presentation for the legislature in 2008, in 1996 only 10.5% of domestic violence cases were prosecuted or rather 89.5% cases were nolled or dismissed. Over ten years later, nothing has changed. I would argue, if we conduct this same study today, we will find the same troubling results. It is time for Connecticut to take a stand.

As a side note, upon reading the above mentioned report, it is reflected that the Family Relations Officers, not the state's attorneys, decide whether to take a case to full assessment, and/or for a pre-trial supervision within the Family Services or be returned on the criminal docket for further prosecution. This document further states it is the Family Relations Officer who decides what orders and safety measures should be pursued, including the level of treatment the defendant should be assigned. Arguably the state of Connecticut is allowing the Family Relations Officers to practice law and make prosecutorial decisions regarding the treatment of domestic violence cases.

The proposal should be reviewed and amended to prohibit all "informal diversion" in criminal cases involving family violence. On line 379, the new language, "or arrested for" should be removed. The OVA is in support of the new language contained in lines 397 through 401, which calls for the entry of a plea as a condition for assignment to the FVEP. This requirement will serve to ensure that the offender is aware of the seriousness of the charges as well as the consequences for failure to successfully complete the FVEP and prevent the practice of failure to prosecute domestic violence cases in this state. I am cognizant that what I say here today is not popular nor welcome in some circles; but when we speak of domestic violence I am not willing to continue to hide the truth for the benefit of the feelings of a few. Domestic violence is about life and death. The questions is, "Are we going to get serious about domestic violence or are we just going to continue to talk about it?"

Section 5 **(Proposed amendment)**

The OVA is concerned with the changes reflected in subsection (c) of Section 5. The protected person listed on an order of protection has asked a court, whether civil/family or criminal, for relief from the abusive behavior of an identified person. In some circumstances, the protected person files for additional protection by way of a request to limit the availability of their identifying information. In most cases, this additional protection sought by the applicant or victim is so that the defendant or respondent does not have access to the information, the public being secondary. Frankly, I am at a loss in understanding the rational of this section of the proposal. Why in the world would the identifying information, specifically the name and address of the protected person, at minimum, "*be available to the defendant or respondent at the same time and in the same manner as such information is available in other proceedings.*" Why would any protected person bother to file a confidential request if the information is readily available to the very person the victim is seeking protection from. Rather, the OVA suggests that the defendant or respondent be permitted to petition the court for release of the identifying information of the protected person if, and only if, good cause is established.

Section 8 **(Proposed amendment)**

The Commission on Child Protection assigns attorneys as attorneys and/or guardian ad litems to represent children and attorneys to represent indigent parents. The reasoning behind providing statutory immunity for attorneys assigned as guardian ad litems for children applies equally to attorneys assigned to represent children and attorneys assigned to represent indigent parents. The OVA suggests that the language be amended to include immunity for all attorneys assigned by the Commission on Child Protection to represent children or indigent parties in child protection matters.

Section 9 **(Support)**

The OVA supports the effort to establish domestic violence dockets within the geographical area courts across the state. As with other specialized docket systems, such as drug dockets, there is typically a better result not only for the offender but also for the victim. It goes without saying that along with the establishment of domestic violence dockets, there needs to be specifically trained prosecutors and judges to handle those dockets. Domestic violence is an epidemic; we can have an influence in our state and stop domestic violence. However, if we simply move cases from the "regular docket" to a "domestic violence" docket, and then to "the diversionary bucket", not changing the current practices and procedures, we have really done nothing at all. The reasoning behind domestic violence dockets is that domestic violence has unique dynamics and complexities. These types of cases often involve a parallel family case in the Family Courts and the Department of Children and Families. We have recognized that domestic violence cases require more attention, further investigation and significantly more services to both the offenders and victims. The idea behind domestic violence dockets is bore from the idea that the prosecutor has fewer cases and can focus on a full court press to immobilize the offender, while simultaneously surrounding the victim with support and protection. Domestic violence

dockets, if utilized appropriately, can reduce the number of incidents of domestic violence, dual arrests and domestic violence fatalities by identifying high risk offenders and immobilizing them. The potential benefits far outweigh the financial burden.

Sections 10 & 11 **(Support)**

Too often, the OVA has heard from victims of domestic violence who, after obtaining an order of protection, is informed that the offender has simply turned their firearms over to their family member, such as a father or brother. From the victim's perspective, possession of a firearm by a family member, such as the father or brother, is equivalent to the offender possessing the firearms him or herself. I applaud the Committee for including this provision in the domestic violence proposal. This is a common sense solution for an identified gap to improve the safety of victims of domestic violence. I strongly urge the Committee's support of this proposal.

Sections 12, 13 & 14 **(Proposed amendment)**

The OVA has been working diligently to end this practice of domestic violence victims being charged with violating their own orders of protection since we first learned of it over two years ago. In an effort to further understand the reasons behind this problem, the OVA requested statistical information from the Judicial Department. From that information, the OVA learned that this problem existed, for the most part, in one corridor of the state. After meeting with the State's Attorney in this corridor, the domestic violence prosecutor and the Chief State's Attorney, the OVA thought that this problem had been resolved. Despite promises from state's attorney and the Chief State's Attorney that this practice would be halted, we are sad to report this practice continues.

An order of protection is issued against a respondent after a court has found that the respondent posses an imminent risk of harm to the named protected person. The respondent in both the Family and Criminal Court is afforded an opportunity to challenge the order, albeit through different procedures. The named protected party on an order of protection does not have any limitations on their liberty; only the respondent or defendant of the order is restricted from certain movements or behaviors. The onus is squarely on the defendant or respondent of the order. It is important to understand that the defendant or respondent of the order has been afforded his or her due process in the state's infringement of his or her liberty, as the respondent or defendant has been provided notice and an opportunity to challenge the state's restrictions on his or her movements. Thus when the state pursues prosecution of a protected person for violation of the order issued to protect that same person, the state is violating both the protected party's due process and state Constitutional rights for at no time has the protected person been provided notice or opportunity to challenge the infringement of his or her movements—an obvious violation of due process rights.

Further, a victim charged with violation of their own order of protection will be at greater risk of harm, either by the abuser or the system. Once a victim is charged and now is a defendant, the victim is unable to seek any protection regardless of whether an order of protection has been issued. The victim will fear arrest and never call the police. The abuser

then uses the arrest of the victim to continue to control the victim with threats of more arrests if the victim does not comply. Further compounding this problem, is that the victim who is now also a defendant, cannot testify (incriminate his or herself) against the offender, less she or he will face certain prosecution of a felony. This practice is not only legally impossible to prove but places victims of domestic violence in greater jeopardy.

The argument often made for arresting a protected person is that the protected person coerced or manipulated the defendant or respondent to violate the order. Again, we must go back to what we know about domestic violence and the complexities associated with domestic violence. In the event that there are occasions as described above, the system can appropriately respond in a number of ways. There may be other crimes that the protected person is committing, such as harassment or falsely reporting an incident for which the protected person can be arrested. Further, the prosecutor and/or the court can review the conditions set forth in the order of protection and modify the order if needed.

In my twenty-five plus years of working in the field of domestic violence, I can confidently state that domestic violence offenders are well versed in manipulation and coercion. Many victims of domestic violence are unable to even recognize this manipulation and often defend their abuser. This is a source of frustration for law enforcement, prosecutors and judges. However, the answer is never found in prosecuting the victim. The frustration is really a symptom of a grave lack of understanding of domestic violence. If we are still asking questions like, "Why doesn't he/she just leave?" and "Why does he/she keep going back?", then we have a lot more work to do.

The OVA suggests that the new language contained in Sections 12, 13 and 14 include and add the following: (sec. 12; line 700, after "for") (sec. 13; line 712, after "for") (sec. 14; line 734, after "for")

"violating said order, including but not limited to:"

I strongly urge the Committee's support of Sections 12, 13 & 14 with the inclusion of the above language.

Sections 16 – 22 **(Support)**

While determining the amount of bond to place on an accused person to assure their appearance in court, a bail commissioner and/or a judicial authority will consider the nature and circumstances of the alleged offense, among other factors. Typically, the more severe the offense is, the higher the bond. Likewise, consideration of a defendant's previous conviction history and record of appearance in court may affect the amount of bond recommended by the bail commissioner and set by the court. Connecticut is unique in that when determining bond amounts, our state Courts are permitted to look at the safety concerns of a named victim(s) and/or the community. This is not the case in many of our neighboring states, and shows our legislators' keen sense of insightfulness in allowing bonds to be utilized in this manner. In cases of violent crime, including domestic violence, sexual assault, home invasion, robbery, and the like, the Court and community have a vested interest in setting a bond that will serve

to ensure safety. However, when a violent offender's bond is undermined by the minority of bond persons who choose to ignore the standards set by our state, and are protected by the lack of enforcement through our continued failure as a state to address these gaps in our bond system, everyone suffers- crime victims whose offenders are set free to continue to terrorize them and, in the most egregious cases, harm the victims; the integrity of the Courts suffers; and bond persons who adhere to these standards, struggle to maintain their businesses.

Sections 16 through 22 will improve the accountability and oversight of bail bond agents providing services to the accused persons seeking release on bond. Unfortunately, a lack of attention and supervision over the bail/bond system has created a system whereby certain bonds agents have undertook questionable business practices to gain a competitive edge. Accused persons are striking side deals (without paying the statutory required percentage) with bail bond agents to gain release. In some cases, there have been reports that bail bonds agents have paid for the release of an offender, without first meeting the offender and obtaining agreement to the terms of the contracted bond. These practices are having a negative impact on the judicial authority, as well as compromising the safety of crime victims.

I strongly urge the committee to support Sections 16 – 22 and put an end to the long history of bad business practices by bail bond agents.

Section 23 **(Proposed amendment)**

The OVA supports the establishment of a task force to develop and implement a statewide model policy for law enforcement's response to incidents of domestic violence. However, the OVA is concerned with the membership of the task force, as proposed. The OVA first presented this proposal, as a recommendation, after an investigation of the murder of Tiana Notice on February 14, 2009. One major gap identified during the investigation and highlighted in the report was the lack of responsiveness and enforcement of Tiana's active restraining order by law enforcement officials. It can be argued that Tiana may be with us today had law enforcement appropriately responded to her complaints that the offender was violating the restraining order. Yes, hindsight is 20/20; however, the lack of adequate policies to address the step-by-step process in responding to incidents of domestic violence, compounded by the failure to enforce the restraining order by law enforcement, is still present today.

The OVA has reviewed many of the state's law enforcement's departmental policies and found that many of the policies are outdated and inadequate. Specifically, not one policy reviewed by the OVA addressed law enforcement's response to a violation of an order of protection aside from commentary on how to authenticate an order, including the model policy adopted by the Police Officers Standards and Training Council (POST), the Office of the Chief State's Attorney (OCSA) and the CT Coalition Against Domestic Violence (CCADV). Although, admittedly, the issue of authentication of an order of protection is important, the policies must spell out the steps to be taken when an offender violates a valid order of protection and to date, most are silent regarding the enforcement of an order of protection.

An important component of the recommendation, as proposed by the OVA, is the creation of a Committee to first conduct an evaluation of the current policies and procedures for law enforcement departments' handling of domestic violence incidents and violations of orders of protection. The Committee membership should include representatives of law enforcement, POST, OVA, CCADV and the OCSA. The Committee would then develop a mandatory statewide model policy based on best practices and standards to be implemented by all law enforcement departments and the Department of Public Safety, including a step-by-step procedure to respond to violations of orders of protection. The Committee would also be required to meet annually to review new legislation and/or best practice models from across the nation, to ensure new laws are implemented as intended and to ensure that the nationwide best practices are continually implemented to best protect victims of domestic violence in Connecticut. The establishment and continuation of this Committee will ensure that Connecticut stays at the forefront in the effort to end domestic violence and enhance the safety of domestic violence victims and their families.

The OVA strongly urges the Committee to support Section 23 of the proposal and consider the OVA's recommended amendments. Specifically, the change in membership outlined in subsection (b) and the termination of the task force outlined in subsection (g).

Section 24 **(Support)**

The OVA is in strong support of an assessment of training programs and an assessment of the effectiveness of the FVEP. There is a heavy reliance on these programs and yet we do not know whether the programs are worthy of that reliance. As domestic violence plagues our communities, it is our responsibility to ensure that the programs utilized are meeting our expectations for offenders, victim safety and public safety.

Thank you for consideration of my testimony.

Respectfully submitted,

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